

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-KMW

CASE MANAGEMENT CONFERENCE VIA TELECONFERENCE

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
August 25, 2021
Commencing at 10:00 a.m.

10 | BEFORE:

THE HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE and
THE HONORABLE THOMAS I. VANASKIE (RET.)
SPECIAL MASTER

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1 **ALSO PRESENT:**

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3 Judicial Law Clerk to The Honorable Robert B. Kugler

4 Larry MacStravic, Courtroom Deputy

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1 (PROCEEDINGS held via teleconference before The Honorable
2 Robert B. Kugler, United States District Judge, and The
3 Honorable Thomas I. Vanaskie (Ret.), Special Master, at 10:00
4 a.m.)

5 JUDGE VANASKIE: All right. Let's see if we can get
6 started now.

7 Who will be speaking on behalf of the plaintiffs?

8 MR. SLATER: Good morning, Your Honor. It's Adam
9 Slater, and I am positive that other members of our leadership
10 will also be speaking to Your Honor as well depending on the
11 issue.

12 JUDGE VANASKIE: Okay. And as Camille indicated, when
13 you're not speaking, please mute your phone; and when you do
14 speak, please identify yourself so we can get it clear on the
15 record.

16 And who will be the primary spokesperson for the defense
17 today?

18 MR. GOLDBERG: Good morning, Your Honor. This is Seth
19 Goldberg on behalf of the ZHP parties and defendants. I expect
20 other defense counsel will also weigh in today.

21 JUDGE VANASKIE: All right. Good morning, Mr.
22 Goldberg.

23 And, again, mute your phones and identify yourselves
24 when you speak. And I thought I was intending to follow the
25 defense agenda letter in terms of the items that we'll address.

1 Of course, if there is anything else we can address that's not
2 on the agenda letters, we can address that as well.

3 And the first item on the defense agenda letter is the
4 briefing schedule on the Teva confidentiality designations.

5 And as I understand it, there are 26 documents at issue.

6 I would like to have those documents emailed to me for
7 *in camera* review. I'd like to follow the same procedure that
8 we followed with respect to the confidentiality issue raised by
9 another party. And it seems to me that's an expeditious way to
10 handle it.

11 I would expect that there would be a brief statement, a
12 brief letter -- succinct, I should say, succinct letter brief
13 on the matter from Teva to be followed by a succinct reply from
14 the plaintiffs.

15 The question I have at the outset is when can Teva
16 produce the documents for *in camera* review and a letter brief
17 on the issue?

18 MR. RUBENSTEIN: Good morning, Your Honor. This is
19 Brian Rubenstein from Greenberg Traurig on behalf of the Teva
20 defendants.

21 We could probably submit something within the next two
22 weeks, if that works for Your Honor.

23 JUDGE VANASKIE: That seems long to me. Why would it
24 take that long?

25 MR. RUBENSTEIN: We can do it --

1 JUDGE VANASKIE: There is a lot going on.

2 MR. RUBENSTEIN: Yes. I mean, we could submit
3 something one day next week as well, if that's better for Your
4 Honor.

5 JUDGE VANASKIE: Yes. I want to move this along. Can
6 you have it to me by Monday of next week?

7 MR. RUBENSTEIN: Monday of next week?

8 JUDGE VANASKIE: What's today? Today's the 25th. How
9 about by September 1st?

10 MR. RUBENSTEIN: September 1st? Let's see, that's
11 Wednesday of next week? Yeah, that should work.

12 JUDGE VANASKIE: Yes, that's a week from today.

13 How much time would the plaintiffs want to file a
14 response?

15 MR. STANOCH: Good morning, Your Honor. David Stanoch
16 for plaintiffs.

17 We don't need that much time, only because of the Labor
18 Day holiday, maybe Friday the 6th, if Your Honor's amenable?
19 That would give us a little more than a week given the holiday.

20 JUDGE VANASKIE: Friday the 9th is it?

21 MR. STANOCH: Oh, I'm sorry. Yes, yes.

22 JUDGE VANASKIE: Okay.

23 MR. STANOCH: Or Friday the 10th or we can do Thursday
24 the 9th, that's fine, too. Just an extra day because of that
25 holiday. Thursday the 9th it is, Judge. Thank you.

1 JUDGE VANASKIE: Okay. And I will just give you a
2 heads up, I may issue an order that schedules oral argument on
3 that as we did in the case of the other party, just because
4 that expedites it and you can get a decision quickly on that.

5 Anything else on the Teva confidentiality designations?

6 MR. RUBENSTEIN: Nothing from Teva, Your Honor. Thank
7 you very much.

8 MR. STANOCH: Nothing from plaintiffs, Your Honor.

9 JUDGE VANASKIE: All right. Thank you.

10 The next item I have on the agenda is plaintiffs'
11 motions for sanctions. That has now been fully briefed and my
12 understanding is perhaps it would be prudent to schedule an
13 argument/hearing date on that motion.

14 Who will be addressing this for the plaintiffs?

15 MR. SLATER: Hello, Judge, it's Adam Slater, and
16 that's fine, Your Honor. I think that makes a lot of sense, if
17 Your Honor wants argument, to schedule something that's
18 convenient for you.

19 JUDGE VANASKIE: All right. Would a date next week be
20 inconvenient? You know, I don't know what all you have going.

21 MR. SLATER: I'm actually away on vacation next week.

22 JUDGE VANASKIE: Okay.

23 MR. SLATER: So if it didn't have to be next week, I
24 would appreciate it.

25 JUDGE VANASKIE: It doesn't have to be next week.

1 Yes. All right. So I will look -- I'm trying to think,
2 when is our next conference call, the 4:00 conference call?

3 MS. SMITH: Judge, I believe it's September 8th.

4 JUDGE VANASKIE: Is that Loretta?

5 MS. SMITH: Yes, Judge. Good morning.

6 JUDGE VANASKIE: Good morning, good to hear your
7 voice.

8 How about September 8th we do it at that time?

9 MR. SLATER: That works for me, Your Honor.

10 MR. GOLDBERG: Your Honor, this is Seth Goldberg.

11 What time were you thinking about on September 8th?

12 JUDGE VANASKIE: Well, we have our call at four in the
13 afternoon. Perhaps we would hear this first at three in the
14 afternoon? Would that be all right?

15 MR. SLATER: That sounds reasonable to plaintiffs.

16 JUDGE VANASKIE: Because it may be that we need to do
17 this on a confidential basis.

18 MR. GOLDBERG: That's fine, Your Honor. September 8th
19 at three is fine.

20 JUDGE VANASKIE: Yes. And does this involve matters
21 that may be covered by the confidentiality order, protective
22 order?

23 MR. GOLDBERG: I don't think so, but we certainly will
24 let Your Honor know.

25 JUDGE VANASKIE: Let me know. Okay. So we'll

1 schedule it for September 8th at 3 p.m. to be followed by our
2 normal monthly discovery conference call. All right, great.

3 The next item I have is the plaintiffs' motion to compel
4 supplemental production, and this one I do have a note that it
5 would have to be a confidential Zoom session on this, on this
6 particular matter.

7 Again, I believe the briefing is complete on this matter
8 as well; is that correct?

9 MR. SLATER: Yes, Your Honor. For plaintiffs, this is
10 Adam Slater, and all briefing is complete.

11 JUDGE VANASKIE: All right. Are we going to jam
12 ourselves up too much if we try to do this on the 8th of
13 September as well?

14 MR. SLATER: For efficiency sake, Your Honor, I think
15 it's really what your preference is, if you want to take these
16 back to back, because there's obviously a lot there. We
17 certainly could prepare ourselves to be ready to do it then if
18 you want to take care of it all that day.

19 JUDGE VANASKIE: Well, there is a lot there and I
20 might be too ambitious presupposing that I could be adequately
21 prepared to hear everything. And I want to be in a position
22 that, if possible, I may rule at that time.

23 So how about if we were to schedule this for September
24 15th. Is that too far out? I'm concerned about you all and
25 discovery deadlines, that's the other point.

1 You know what? How about if we schedule it for
2 September 10th, Friday, September 10th?

3 MR. SLATER: That's fine with plaintiffs, Your Honor.

4 JUDGE VANASKIE: Mr. Goldberg?

5 MR. GOLDBERG: You're talking about the motion to
6 compel now, Your Honor?

7 JUDGE VANASKIE: Yes, I'm talking about the motion to
8 compel. Motion for sanctions will be argued on September 8th;
9 motion to compel I'm suggesting September 10th.

10 MR. GOLDBERG: What time on September 10th?

11 JUDGE VANASKIE: I have to -- I have to look. I have
12 a doctor's appointment that day. But I think if I said three
13 in the afternoon I know I would be safe. Is that all right?

14 MR. GOLDBERG: Yes, I expect that will work fine for
15 ZHP, Your Honor.

16 MR. SLATER: That's fine for plaintiffs, Your Honor.

17 JUDGE VANASKIE: Okay. So we'll schedule that for
18 September 10th at 3 p.m.

19 MS. SMITH: Excuse me, Judge. It's Loretta. Are
20 these both arguments Zoom, via Zoom or telephone?

21 JUDGE VANASKIE: Good question. And I'd like to do
22 them by Zoom.

23 MS. SMITH: Thank you.

24 JUDGE VANASKIE: And I know this one has to be done on
25 a -- the motion to compel supplemental production, from the

1 letters that you all sent to me, that should be conducted on a
2 confidential basis or *in camera*.

3 MS. SMITH: And the Zoom credentials I don't believe
4 have ever been put on ECF which are confidential.

5 JUDGE VANASKIE: Okay, good. So we'll keep it that
6 way. All right? Unless I get a request from either counsel or
7 from some other source that says there's no need for it to be
8 confidential. But if it's covered by the confidentiality
9 order, then it will be conducted *in camera*. All right?

10 MR. SLATER: Yes, Your Honor.

11 JUDGE VANASKIE: Okay: Now, so far things have not
12 been too contentious this morning but I think we're getting to
13 more contentious parts.

14 The next item on the agenda is the modification to the
15 class briefing and discovery schedules. And who will be
16 addressing this issue on behalf of the defendants?

17 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
18 will start and certainly invite my colleagues, Rebecca Bazan,
19 and I believe some other defense counsel may want to chime in
20 here as well.

21 JUDGE VANASKIE: Okay.

22 MR. GOLDBERG: I think I'll just start.

23 JUDGE VANASKIE: Yes.

24 MR. GOLDBERG: With respect to the class certification
25 deadlines, Your Honor may -- may be aware of this, but the

1 Court -- Judge Kugler entered an order, CMO 23, which has a
2 number of different deadlines and October 4th were deadlines
3 for the depositions of treaters, the bellwether plaintiffs'
4 treaters and prescribers, any new putative economic loss class
5 representatives and discovery and wholesalers and retailers.
6 And I think there are a few things going on here.

7 With respect to the treaters and prescribers, and as
8 we've set forth in our letter, the parties have been working to
9 get these depositions completed, we've obviously completed a
10 lot of discovery with respect to the bellwether plaintiffs and
11 the class representatives, we conducted 23 bellwether
12 plaintiffs depositions; there are a few more that have to be
13 scheduled. We've taken the depositions of all of the putative
14 class representatives and third-party payors that were named in
15 the original complaints. But with respect to the treaters,
16 these are third parties and it's not as easy to get them
17 involved in the case, they obviously don't have a dog in the
18 fight, they obviously have other things going on in their
19 practices, and what we would like to try to do is have a little
20 bit of relief in this schedule because it's going to be
21 necessary to subpoena some of these treaters. Of course,
22 there's a 30-day response time on subpoenas.

23 And so what we've proposed to plaintiffs, which they
24 apparently have rejected, is that with respect to the deadline
25 on treater deps, an additional 30 days just so we have a

1 pressure release valve on getting these third parties deposed.

2 And so that's the issue with the treaters, but I'll
3 certainly invite my colleagues who would like to talk about the
4 treaters to weigh in there.

5 JUDGE VANASKIE: All right. Let's see if we hear from
6 any other defense counsel.

7 (No response).

8 JUDGE VANASKIE: Okay.

9 MR. GOLDBERG: So, now, on the treaters, again, Your
10 Honor, it's building in a little bit of relief so that we can
11 make sure we get these very important witnesses deposed, and a
12 request of 30 days seems immanently reasonable.

13 JUDGE VANASKIE: All right.

14 MR. GOLDBERG: Moving to the economic loss class
15 representatives --

16 JUDGE VANASKIE: Can I interrupt you for a second, Mr.
17 Goldberg?

18 MR. GOLDBERG: Sure.

19 JUDGE VANASKIE: I don't mean to interrupt but I think
20 it would be productive for me if I heard from plaintiffs now
21 before we move to the next issue.

22 So, Mr. Slater, are you addressing this?

23 MR. SLATER: I am not, Your Honor. Conlee Whiteley
24 is.

25 JUDGE VANASKIE: Okay. Let's hear from Ms. Whiteley.

1 MS. WHITELEY: Your Honor, this is Conlee Whiteley.
2 I have been involved in the meet and confers on this
3 issue last night and this morning and we have not yet rejected
4 the offer of 30 days. It was made to us a few minutes before
5 the call and as I have not been handling these issues and my
6 colleague, Daniel Nigh, has been, I suggested to the defense
7 group that I would convey that to him and let him give it some
8 thought. He's only had a few moments to do so. I am not sure
9 he's on the line, but if he is, I'd invite him to speak to the
10 issue. But, otherwise, I would suggest that we'd be given a
11 little bit more time to consider it before we can determine
12 whether it's acceptable or not.

13 MR. NIGH: Your Honor, this is Daniel Nigh. I am on
14 the line here, and, you know, this is kind of an issue that's
15 been put to us, we were meeting and conferring yesterday but at
16 the same time, I've been in depositions defending the expert
17 for valsartan, Dr. Etminan, and will be defending the
18 depositions again today. So I really haven't had a lot of time
19 to meet and confer, but I can tell you at first blush the
20 problem following, you know, at first I think it was put to us
21 asking for something like a 60-day extension, but a 30-day
22 extension is still an issue because we've been told from the
23 beginning that the defendants apparently thought it was
24 necessary to take these doctor depositions in this timeframe to
25 gain some insight as to somehow it could be useful for Daubert.

1 That was the latch and the reason as to why this needs to be
2 done now at this timeframe. This is upon defendants'
3 insistence to have these doctors' depositions.

4 The problem is is that 30 days puts us right to, you
5 know, some of the briefing for *Daubert* and we don't want to be
6 moving *Daubert* back by any means, we think it's completely
7 unnecessary and we don't think these doctor depositions have,
8 you know, a lot of bearing on *Daubert*, but that's been the
9 defendants' thinking as to why it should be.

10 So the last thing we want is to be put in a position
11 where we are prejudiced, you know, with these deadlines where
12 we're getting doctor testimony right in the middle of while we
13 are briefing or after we've already briefed some of these
14 issues, the *Daubert* issues.

15 So our position, you know, at this point is to reject
16 any sort of continuance.

17 We've also continued to always be discussing these
18 bellwether issues with Dr. Kugler, you know, and Dr. Kugler
19 I've raised with him multiple times narrowing the pool from 28
20 to ten. Defendants have rejected that proposal. Had we done
21 that, we could, I think, easily have completed these deadlines
22 before October 4th, and I continue to push that that is what I
23 think we should do.

24 I think we are making progress on bellwether depositions
25 and we have, you know, many of these doctor depositions

1 scheduled, so I agree with defense there; but I do think that
2 the appropriate thing that should be occurring at this point is
3 we winnow the pool to ten doctor depositions, ten cases, and
4 I'd propose a method to do that.

5 Previously Kugler said, no, we're not going to winnow
6 the pool now but come back to me, keep coming back to me on
7 this issue. So I'm coming back, especially in light of the
8 devil being here.

9 I think, in addition, I'm sensitive in the State of
10 Florida to just the rampant COVID outbreak yet again. I can
11 say that one of the issues that we've tackled with is that some
12 of the doctors, the ones that we're trying to depose, they're
13 treating oncologists lots of times working at the hospitals,
14 and so we're asking them to take time away from, you know,
15 saving patients' lives while we're having spikes in COVID, and
16 that's not going to stop. I mean, it's only starting to spike
17 in other states. It's all going to go up through the winter
18 as, you know, typically predicted in pandemics.

19 So I don't think a 30-day difference -- a 30-day
20 extension is going to make any difference to distracting
21 doctors from their medical purpose to take the deposition.
22 It's all the more reason I think we should narrow this pool to
23 ten cases.

24 MR. GOLDBERG: Well, Your Honor --

25 JUDGE VANASKIE: Well, that is a matter for Judge

1 Kugler. But go ahead, Mr. Goldberg.

2 MR. GOLDBERG: Yes. Your Honor, I would just say I
3 think Mr. Nigh's point, you know, is really sort of what we're
4 dealing with. I mean, I don't know that it's COVID related,
5 but, generally, when you're trying to pull third parties into a
6 litigation, it takes a little bit of herding cats, so to speak,
7 and so we're simply addressing that reality by asking for a
8 very modest extension of 30 days.

9 I'm not sure what the concern about *Daubert* is. Those
10 briefs would be due to be filed November 1st. If we wanted to
11 set the deadline for that date we could. I don't -- I don't
12 recall that these treater depositions would be the subject of
13 *Daubert* motions. The expert witness reports are already in,
14 the experts are being deposed, this won't do anything with the
15 expert schedule nor should it do anything to the *Daubert*
16 schedule. It's really just addressing the practical realities
17 and challenges of bringing third parties into this litigation.

18 JUDGE VANASKIE: And I take it, Mr. Goldberg, the
19 deadline for the *Daubert* motions of November 1st applies to
20 you, that's when your papers would be due.

21 MR. GOLDBERG: Correct. Correct, Your Honor. And I
22 would think perhaps plaintiffs will be filing *Daubert* motions
23 but certainly we will be and I don't envision we would be
24 saying that these treater depositions would require us to move
25 that date back.

1 MR. NIGH: Your Honor, if I could respond?

2 JUDGE VANASKIE: Mr. Nigh, yes.

3 MR. NIGH: Yes, we are filing *Daubert* motions.

4 They've brought nine experts, and I suspect that there's a good
5 possibility we'll be filing *Daubert* motions just from looking
6 at those expert reports. But on top of that, the whole
7 statement from the defendants the entire time when we
8 questioned why do we have to do these doctor depositions during
9 this timeframe as opposed to after *Daubert*, and the defendants
10 have consistently said over and over and time and time again,
11 it's on the record, that we think we need to have these
12 depositions for *Daubert*. So, you know, now I'm hearing for the
13 first time that maybe it's not even relevant for *Daubert*, but
14 that's the whole reason we did it in this timeframe.

15 So that's why I raised that getting a doctor
16 deposition -- I mean, if you're taking a doctor -- even if it's
17 November 1st, our deadline is November 1st, what kind of time
18 do we have to react to that doctor's testimony? We've already
19 written the brief at that point. So, you know, frankly, that,
20 in my opinion, does prejudice us.

21 I really think we need to be, at this point, if we went
22 from 28 to ten, and we focused on the ten cases, we could
23 buckle up and get all those doctor depositions done in this
24 timeframe.

25 JUDGE VANASKIE: I know you keep saying that.

1 MS. LOCKARD: Your Honor, it's Victoria Lockard.

2 JUDGE VANASKIE: Hold on a second. Hold on a second.

3 I know, Mr. Nigh, you keep saying that but that is an
4 issue that is for Judge Kugler. I can't change the number of
5 bellwether plaintiffs in this matter.

6 Go ahead, Ms. Lockard.

7 MS. LOCKARD: Hi, Judge. Yes, thank you.

8 So I actually ordered the case management schedule with
9 Judge Kugler so I wanted to be heard on this issue about
10 whether the treaters are necessary for *Daubert*. If you look
11 back in the transcript, you will see Kugler, Judge Kugler --
12 and I know Daniel Nigh had elevated him to a doctor today
13 but --

14 JUDGE VANASKIE: Well, I don't know if that's
15 elevation. I'm sorry, go ahead. It might be more compensation
16 but it's not --

17 MS. LOCKARD: You're absolutely right, demoted him to
18 doctor.

19 Judge Kugler -- you know, Judge Kugler was being clear.
20 He wanted the case of bellwethers to be worked up on a dual
21 track. And we went through this time and time again. He
22 wanted these cases worked up for trial, he wanted the
23 bellwethers pushed forward, he wanted to get them ready and the
24 discovery completed. So that's the reason that we wanted and
25 the judge wanted these treaters to be deposed. It wasn't part

1 and parcel of the *Daubert* motion issue.

2 So the second issue, and it sounds like you're, Judge,
3 in agreement that the narrowing of the bellwethers has been
4 addressed, you know, I think at every status conference before
5 Judge Kugler in recent months, and he has continued to deny
6 that request. So I don't think it's appropriate. I think it's
7 been ruled on for now, and if there is any decision to be made
8 about that, I think it would need to be taken up with Judge
9 Kugler.

10 That's all I had. Thank you, Judge.

11 JUDGE VANASKIE: Thank you.

12 From what I was hearing from Ms. Whiteley is that this
13 request for a 30-day extension was just received and I was
14 hoping maybe you could come to an agreement after some
15 additional meet and confer. But are you saying, Mr. Nigh,
16 that, no, this is it, we've got to stick with October 4th and
17 that's it?

18 MR. NIGH: Honestly, Your Honor, I have not had the
19 ability to meet and confer with defendants on this issue. This
20 was raised at a time where I've been taking the deposition and
21 defending the deposition of Dr. Etminan. I have not had a
22 chance to meet and confer with them.

23 I wouldn't be able to sit here and say we've exhausted
24 every idea or --

25 (Interruption by the court stenographer.)

1 MR. NIGH: I wouldn't say that we've, you know, had
2 any sort of meaningful meet and confer on trying to resolve
3 this issue.

4 JUDGE VANASKIE: Well, I'm going to direct that you do
5 meet and confer on this issue. It seems to me it's a
6 resolvable issue, that there can be a way that you can provide
7 some relief with respect to getting these depositions taken and
8 at the same time avoid prejudice to yourselves and that's what
9 I'm trying to accomplish here.

10 So what I'd like to direct is that I get a supplemental
11 letter report by next -- would next Wednesday be enough time,
12 Mr. Nigh, for you all to have an opportunity to confer on this
13 issue?

14 MR. NIGH: I believe so, Your Honor.

15 JUDGE VANASKIE: Okay. So that is September 1st. So
16 I'll ask for a letter report on the deposition deadline for
17 treater physicians by September 1st. Okay?

18 MR. NIGH: Thank you, Your Honor.

19 JUDGE VANASKIE: Thanks.

20 MR. GOLDBERG: Your Honor, the next scheduling issue
21 relates to the class action, putative class representatives.
22 And Judge Kugler's CMO 23 also provided a deadline of October
23 4th for the depositions, and this is how it's stated in the
24 order: The depositions of any new putative economic loss class
25 representatives allowed by the Court.

1 And as Your Honor may be aware, plaintiffs filed their
2 original class action complaints, they named approximately 30
3 class representatives, and in the time that the CMO 23 was
4 issued back in February of this year, those class
5 representatives were the only named class representatives and
6 operative complaint and the discovery deadline as to those
7 class representatives was -- and the depositions of those class
8 representatives was conducted in the first -- in what we've
9 called the first phase of discovery and completed back in --
10 back around June 1.

11 The new class representatives would be class
12 representatives that were named in plaintiffs' proposed amended
13 complaints. And as the Court may be aware, in April of 2021,
14 plaintiffs moved to add approximately 27 -- or moved to add
15 specifically 27 economic loss class representatives and seven
16 medical monitoring class representatives. And it's their
17 depositions that were to be completed by October 4th.

18 However, with respect to those class representatives,
19 they have not yet been added to any operative complaint, and
20 discovery as to them has not been taken. Plaintiffs have not
21 provided Plaintiff Fact Sheets for those new class
22 representatives; and as a result, defendants don't even know
23 which alleged -- which drugs or which manufacturer's drugs
24 those class representatives are alleged to have taken, which
25 means the Defendant Fact Sheets as to those class

1 representatives have not been completed. And as a result,
2 without the Plaintiff Fact Sheets and without Defendant Fact
3 Sheets, depositions of these new class representatives, who are
4 not yet added to a complaint, can be taken.

5 Now, plaintiffs, at least in the meet and confers we've
6 had, have been unwilling to extend the deadline, this October
7 4th deadline, for these new -- new plaintiffs again who have
8 not yet been added to an operative complaint and insist that
9 they should all be deposed by October 4th, notwithstanding that
10 they have not provided their Plaintiff Fact Sheets.

11 In our view, if plaintiffs want to proceed with the
12 plaintiffs from their original complaints for whom the
13 depositions have been taken and discovery is -- and discovery
14 for purposes of their class certification briefing has been
15 done, we can do that. But if plaintiffs insist on adding new
16 plaintiffs as class representatives, then we need to be able to
17 have the discovery necessary to determine whether those class
18 representatives are adequate class representatives. And when
19 put to the -- to the question, well, are you going -- are you
20 willing, Plaintiffs, to stand on the class representatives for
21 whom discovery has been taken, they say no. We need to add
22 these new class representatives. But at the same time they're
23 not -- they would have it both ways. They need to add the
24 class representatives but now they're saying you should have to
25 complete the discovery by October 4th, even though they have

1 not met their obligation by providing the Plaintiff Fact Sheets
2 that begin the process of taking their depositions.

3 JUDGE VANASKIE: All right.

4 MR. GOLDBERG: So our view -- and here again, Your
5 Honor, what we tried to do in the meet and confers was try to
6 build in, you know, some kind of relief in the schedule to
7 allow for the deposition -- well, the discovery process of
8 these new class representatives, which -- which is, by the
9 orders of this Court, a multistep and multimonth process
10 because each class representatives has to do a Plaintiff Fact
11 Sheet, which then triggers Defendant Fact Sheets for each class
12 representative at each level of the supply chain. That takes
13 time and the Court orders provide for, as Your Honor may be
14 aware, sort of a waterfall or cascade of Defendant Fact Sheets
15 going up the supply chain. And it's only after those things
16 are complete, all of the records have been collected, that
17 class representatives may be deposed. And we just think this
18 is -- this is, you know, this is a matter of, sort of again,
19 one of the practical realities and it's not -- this isn't
20 defendants' doing. Plaintiffs are seeking to add class
21 representatives, those class representatives have not yet been
22 added to the complaint, and the Court order envisions the
23 depositions of putative class representatives that have been
24 allowed by the Court and at this point those -- those putative
25 class representatives in the proposed amended complaint have

1 not been allowed by the Court.

2 JUDGE VANASKIE: All right. I will hear from Mr.
3 Slater in a second.

4 What I want all sides to understand is that I will be
5 addressing the motions for leave to amend the complaint and I
6 hope to have decisions out on that shortly, subject, of course,
7 to your right to seek review of that decision by Judge Kugler;
8 but I will be addressing the motions for leave to amend.

9 Mr. Slater, did you want to be heard on this?

10 MR. SLATER: Your Honor, I think other members of our
11 team will continue to address this.

12 JUDGE VANASKIE: Okay.

13 MS. WHITELEY: Yes, Your Honor, this is Conlee
14 Whiteley. I was the one involved with the meet and confers
15 last night and this morning, and I will be addressing the
16 issue.

17 First of all, I don't believe Mr. Goldberg was involved
18 in the meet and confers so there may be a few details that went
19 by the wayside, but where we stood -- this was brought to our
20 attention last week and, yes, there are practical
21 considerations by the way that not every bit of the timing was
22 anticipated when the schedules were entered, and, you know,
23 technically, these putative economic loss class members and
24 medical monitoring class members have not yet been added to the
25 complaint, and as you mentioned, you'll be addressing that

1 soon, but in order to try to resolve this, you know, sort of
2 practical problem that we all have on our hands, the plaintiffs
3 offered, when this was raised to us last week, we said that we
4 would go ahead and get all the Plaintiff Fact Sheets out now
5 and that there would be plenty of time to depose these
6 witnesses before the defendants' brief is due -- or their
7 opposition brief is due next March, and, you know, they
8 responded that that wouldn't be enough time because of the
9 waterfall issues, but we really were able to efficiently handle
10 all the depositions of the concurrent putative class members.
11 They were provided their PFS, we worked with them to get their
12 medical records. Their depositions were taken long before the
13 entire completion of the waterfall process took place, and I
14 think that the defendants are, you know, fully informed and
15 have adequate depositions to defend.

16 So what we thought would be best, and we suggested last
17 night, is to allow 60 days for this to take place. And we
18 offered to give the Plaintiff Fact Sheets as soon as possible,
19 roll them out, we could schedule the depositions, you know, in
20 order of how the fact sheets come out, and then, you know, just
21 get it done, unless the Court, of course, encourages us not to
22 do it that way based on, you know, any forthcoming rulings.

23 And I will -- granted, this offer was tied to a
24 different offer which in the meet-and-confer process that we
25 are talking about the treater physicians, but this morning when

1 we had another meet and confer, basically what was discussed
2 was they had a different idea about the treater depositions,
3 which you've already heard about the 30 days, and now we're
4 going to continue to meet and confer on that; and then on the
5 class representative side, they suggested we just go forward
6 with our class briefs for the current class representatives and
7 just keep -- push to the side the other class representatives;
8 and our position is, we'd rather get this work done, let's just
9 go ahead and do it, but we would still -- you know, obviously
10 it can't be done, practically speaking, by October 4th,
11 consistent with all the other work that needs to be done in the
12 case.

13 And so we thought that was a reasonable solution to get
14 this resolved and that's where we stand.

15 Oh, and one other thing, Your Honor. Just in terms of
16 deposing the plaintiffs, our amended complaints have the
17 allegations as to what -- the products that each plaintiff
18 took, which -- you know, which manufacturer manufactured the
19 product, and the relevant information as to wholesalers and
20 retailers. So we do think that there is ample information to
21 begin preparing for those depositions which will be
22 supplemented by the Plaintiffs' Fact Sheets.

23 JUDGE VANASKIE: Ms. Whiteley, if I understand you
24 correctly -- I will hear from others as well, but let me ask a
25 question before it loses my mind.

1 As I understand it, what you're proposing is that the
2 deadline to complete fact witness depositions be extended by 60
3 days for the -- for the class representatives, and you assert
4 that won't affect the briefing on the motion for class
5 certifications. Do I understand you correctly?

6 MS. WHITELEY: Correct, because we will be prepared to
7 file our brief timely, we have the information and it won't
8 affect our brief; and then they don't have to file their brief
9 until March. Because the reason there is a good bit of time
10 there is because there will be expert depositions and other
11 things going on. And so if we push forward with these new
12 depositions in the fall, they'll have plenty of time to
13 synthesize that information and have their brief ready by
14 March.

15 JUDGE VANASKIE: All right. Now, I interrupted
16 somebody. I didn't know who was going to speak.

17 MR. GOLDBERG: Thank you, Your Honor. This is Seth
18 Goldberg and I will and then I would certainly invite my
19 colleagues.

20 There are a few factors to consider when thinking about
21 pushing this October 4th date on the depositions for new class
22 representatives. Obviously, one, of course, is when -- when
23 and if and how many of them would be added to the complaint.
24 But Your Honor has to take into account the process that the
25 Court has established for getting a Plaintiff Fact Sheet, for

1 putting the defendants in the position to do what are called
2 Defendant Fact Sheets, which start with the retailers doing a
3 Defendant Fact Sheet. That -- the completion of those then
4 triggers the wholesaler Defendant Fact Sheet which triggers the
5 finished dose manufacturer and then the API manufacturer
6 Defendant Fact Sheets. That process which the parties have
7 adhered to for the last year or so, and with respect to all of
8 the original class representatives, is necessarily a multimonth
9 process and it is critical to the depositions. Many of the
10 depositions of the class representatives do turn on their
11 medical evidence, perhaps even more so in some ways than the
12 bellwether plaintiffs because one of the things they have
13 asserted is that they received the benefit of the bargain. In
14 other words, they received or did not receive the benefit of
15 the bargain for their valsartan and so a lot of the questioning
16 goes to their treatment with valsartan. And so we need to be
17 able to get at their underlying medical records which is a
18 somewhat time-intensive process.

19 Another thing to consider is that before the March 3rd
20 response on class certification, on January 5th, our deadline
21 for defendants -- is the deadline for defendants to serve their
22 expert reports addressing class certification. And so, you
23 know, we need the time to do this discovery in order to be able
24 to put together our expert witnesses on class certification,
25 which are going to go at adequacy, typicality, commonality and

1 all of these factual questions regarding the putative class
2 representatives. And I think it's -- you know, it's even
3 incumbent really on plaintiffs to have all of this information
4 in filing their class certification motion. But if they're
5 saying they don't want to do that, that's their option; but we
6 want to have all of this information and have the right to have
7 all of this information in opposing class certification.

8 And so while Your Honor could consider the deadline,
9 pushing back the October 4th deadline, we don't think you can
10 do that in isolation. You have to push back by the same amount
11 of time or something similar the other class certification
12 deadlines in order to achieve the purpose of these different
13 class certification deadlines, which is that the class
14 certification briefing will encompass all of the necessary
15 factual information for establishing or opposing a class
16 representative and -- and a class action motion.

17 MS. WHITELEY: Your Honor, if I may address this?

18 JUDGE VANASKIE: Yes, Ms. Whiteley.

19 MS. WHITELEY: Conlee Whiteley again.

20 The -- as I mentioned, the earlier depositions of
21 plaintiffs were completed thoroughly without the Defendant Fact
22 Sheets, and all the information that come from the Defendant
23 Fact Sheets are in the defendants' possession to begin with.
24 They have the NDC codes, they can get really all the
25 information they need.

1 Plaintiffs concede that collecting the medical records
2 does take time. Some of them go rather quickly. We watched
3 them happen in the past few months. Some of them take quite a
4 bit of time. Those depositions can be taken closer to the end.
5 The ones that they have everything ready to go can be pushed to
6 the beginning. If there are a couple others that spill over, I
7 think we can make arrangements if and when that's a problem
8 that we have to address. But there's just simply no reason
9 that once they have the medical records and the Plaintiffs'
10 Fact Sheets, the defendants have the rest of the information in
11 their own possession and they can move forward with the
12 depositions.

13 JUDGE VANASKIE: Ms. Whiteley, how soon can you
14 produce Plaintiffs' Fact Sheets for these new class
15 representatives?

16 MS. WHITELEY: We can roll them out having a set ready
17 within a week, and then we can follow it out with weekly
18 productions until they're completed.

19 JUDGE VANASKIE: Okay.

20 MS. BAZAN: Your Honor, this is Rebecca Bazan for the
21 defendants. May I jump in briefly?

22 JUDGE VANASKIE: You certainly may.

23 MS. BAZAN: Thank you very much, Your Honor.

24 I just wanted to clarify that the defendants do need
25 more information than is in the proposed pleading to complete

1 the Defendant Fact Sheet.

2 If I back up one second.

3 Right now, plaintiffs want to double the number of class
4 reps but there is no deadline. There is no scheduling order
5 for taking the depositions of any of those 34 class reps that
6 they want to add because none of them have been added by the
7 Court. So that's, you know, that's the first issue that we're
8 all facing is we don't know whether discovery as to these
9 people and any subset of these new class reps the plaintiffs
10 want to add will even go forward. So that's issue number one.

11 Issue number two is, if any of them is allowed to go
12 forward, then we need a schedule for completing their discovery
13 and depositions. And for the first round, for the class reps
14 for whom discovery has already been completed, the Plaintiff
15 Fact Sheets, which not only include the fact sheet itself but
16 also necessary records and authorizations so defendants can get
17 the medical records that we need, those Plaintiff Fact Sheets
18 were generally completed around August of 2020 and then the
19 depositions occurred and completed at the end of May, 2021. So
20 it was a nine-month process when we already had the completed
21 Plaintiff Fact Sheets. So even if we could narrow that
22 timeframe somewhat, two months is just not possible to double
23 -- like, double the amount of work that we did for the first
24 round.

25 MS. WHITELEY: Your Honor, this is Conlee Whiteley

1 again, if I may.

2 The records request did come a little late in that
3 process and one of the things that we talked about last night
4 was the best way to handle this is while we are getting the
5 fact sheets undergoing that we would have two people from
6 plaintiffs' side designated to deal with someone on whoever
7 they designate on their side and have all of this handled much
8 more efficiently and get all of these medical authorizations
9 processed and ongoing right now. They trickled in and
10 sometimes they were handled three, four, five, six times by
11 different counsel for different plaintiffs, and sometimes they
12 were traded off, and I think that there's just -- and I'm not
13 putting any blame on anyone, I think it's just kind of the way
14 it happened. But there's now -- based on what we saw happen, I
15 think there is a way we can improve that and cut down the time.
16 But it was a little bit staggered in the sense of they got the
17 Plaintiff Fact Sheets and then the medical records,
18 authorizations started coming in, the documents began to be
19 produced. And then part of the reasons the depositions didn't
20 take place until after the first of the year, although they had
21 been offered earlier, was a choice the defendants did make.
22 And I think that that mainly had to do with the medical
23 records. But there really is a much more efficient way we can
24 handle it and I think we can get it done in the timeframe that
25 I had suggested.

1 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
2 just want to remind the Court that, just as plaintiffs have,
3 the parties will be in *Daubert* briefing this fall, adding --
4 we're going -- we are looking at adding discovery as to more
5 than 30 class representatives, when you count in both the 27
6 economic loss class representatives and the seven medical
7 monitoring class representatives.

8 Ms. Whiteley has readily conceded that it is a
9 time-intensive process. I think defendants would agree that
10 there -- we certainly would work with plaintiffs to try to have
11 more efficiency, we've obviously been down this road before,
12 but this is -- this is -- there can be no doubt about it, this
13 is by plaintiffs' doing because they are the ones who are
14 adding these plaintiffs, and they could have provided the
15 Plaintiff Fact Sheets for them long ago. We're now waiting for
16 those. And to prejudice defendants by saying we're going to
17 give you an extension on the front end for discovery but we're
18 not going to move any of the other deadlines, and, therefore,
19 we're going to squeeze you on the briefing schedule, is really
20 not fair and does prejudice defendants in terms of preparing
21 our class representative expert and our opposition to class
22 certification.

23 We certainly would work with plaintiffs to have an
24 efficient discovery process but the different deadlines
25 relating to class certification have to move in light of

1 plaintiffs needing to apparently add these 30-plus class
2 representatives.

3 The schedule that is currently set for briefing was
4 based on the original class representatives and that's it. And
5 so we would certainly work with plaintiffs on trying to make
6 this discovery more efficient but we think it is both
7 reasonable and necessary to extend a few of the other
8 deadlines, like for the class certification experts and class
9 certification briefing, to make sure that all of the class
10 certification issues are properly teed up.

11 JUDGE VANASKIE: And, Mr. Goldberg, what are you
12 proposing?

13 MR. GOLDBERG: I think wherever we landed on an
14 extension for timing in terms of discovery, we would have some
15 additional -- we would have a sort of corresponding extension
16 to the other class certification deadlines. So if it's -- we
17 don't think 60 days is reasonable in terms of the discovery
18 only because, as I think all of the parties have now said, it
19 is a time-intensive process, but let's say it was 120 days for
20 discovery, maybe we wouldn't put out the briefing -- each
21 briefing deadline for 120 days, but we would do -- we would
22 mirror what's in the schedule.

23 So in the current CMO 23, there's a one-month -- what I
24 would do is I would just mirror the sequencing in CMO 23 in
25 terms of when plaintiffs would file their class certification

1 motion, when defendants would file their class certification
2 expert reports. Looking at that schedule, for example,
3 plaintiffs, under the current schedule, plaintiffs have one
4 month after October 4th to file their class certification
5 brief; defendants have, it looks like, two months from that
6 date to January 5th to file their expert reports on class
7 certification; then there's another month for defendants to
8 take -- or plaintiffs to take those depositions and so on.

9 So I would follow CMO 23 in terms of the staging of
10 class certification once we reached a decision on the amount of
11 time necessary to complete this discovery.

12 MS. WHITELEY: Your Honor, may I address?

13 JUDGE VANASKIE: Yes, you may.

14 MS. WHITELEY: Thank you. This is Conlee Whiteley
15 again.

16 When the dates in the current CMO under which we are
17 operating were negotiated, they were negotiated between the
18 plaintiffs and defendants and a lot of care was put into the
19 schedule in terms of what could be expected in terms of class
20 action and what was coming down the road that we had already
21 explained would be coming.

22 In the process, starting last December, and it went on
23 through February, we indicated our intention to add these new
24 putative class representatives, and at that time we even
25 offered to give them Plaintiff Fact Sheets and have these

1 depositions roll out, and this was a process that we offered
2 into the spring and there were reasons the defendants chose not
3 to do that. They said that they didn't know what the
4 allegations would be, so on and so forth. It's been an
5 evolving argument. But that said, that choice was made not to
6 do that.

7 We -- I think all the parties anticipated that these
8 plaintiffs would have been added or a decision would be made
9 one way or another before now, but it's a very tight schedule
10 and we understand why that might not have happened.

11 And so to wholesale move everything down the road when
12 much of this was anticipated when the parties negotiated for
13 hours into the night on coming to this agreement, because we
14 gave up certain things in order to, you know, to allow
15 defendants to have more time in other areas in order to get the
16 schedule in place, and to just pick it up and push it down the
17 road is very unfair to plaintiffs. We will be prejudiced. And
18 there's just so much more that we could get done in the
19 short-term.

20 And another thing on how long it took to depose the
21 plaintiffs, there was roughly ten months between the Plaintiff
22 Fact Sheets and the defendants even beginning to ask for
23 medical records. There was a large gap and a lot got done even
24 in a short amount of time at the very last minute right before
25 the depositions, but if we change that process, it can be much

1 more accelerated and we can get it done in the timeframe that
2 we suggested.

3 JUDGE VANASKIE: All right. I'd like --

4 MS. BAZAN: Your Honor, may I just respond to one
5 quick thing? This is Rebecca Bazan for defendants again.

6 JUDGE VANASKIE: Yes, ma'am.

7 MS. BAZAN: Thank you very much.

8 Plaintiffs do not need defendants' permission to file
9 Plaintiff Fact Sheets, so we do not know why plaintiffs have
10 not availed themselves at their ability to do that but they did
11 not.

12 And then second, when the current schedule was
13 negotiated, it was when plaintiffs had filed their original
14 motion for leave to amend to add some economic loss class reps
15 in December and so then the deadline for any class reps that
16 were added was negotiated to be October, so ten months from
17 then. And now plaintiffs have changed who and how many class
18 reps they want to add, in April they did that. The economic
19 loss class reps that they want to add now are different from
20 the ones they said they wanted to add in December in some
21 cases, and now they also want to add medical monitoring in the
22 class representatives. So the previously negotiated schedule
23 built in ten months for this process and now who we are talking
24 about and the number has changed. So, thank you, Your Honor.

25 JUDGE VANASKIE: Thank you all. And this is a bit of

1 a complicated issue.

2 I will direct that the plaintiffs commence the
3 production on a rolling basis of the class representative
4 Plaintiffs' Fact Sheets, and I think I heard Ms. Whiteley said
5 they could start as early as next week and can be done on a
6 rolling basis, so we get started at least on that.

7 I'm going to take a look at the transcript from today's
8 arguments and make a ruling and you'll have it by the end of
9 the week in terms of what we're going to do in terms of the
10 deadlines for the depositions and all other corresponding
11 deadlines, whether they move or not.

12 There's a great urgency and a great desire that the
13 schedule not be pushed back when it comes to class
14 certification motions and briefing, and so that's a factor I
15 have to take into consideration as well. But you'll have an
16 order by the end of the week with respect to these deadlines.

17 MR. GOLDBERG: Thank you, Your Honor.

18 MS. WHITELEY: Thank you, Your Honor.

19 JUDGE VANASKIE: I think the last thing I have on the
20 schedule, and correct me if I'm wrong, is the timing of
21 additional fact witnesses, depositions of additional fact
22 witnesses, which I think there's an understanding that you're
23 simply looking for confirmation that they can occur closer to
24 trial date, don't need to be taken within the present schedule.

25 Am I understanding that correctly?

1 MS. LOCKARD: Your Honor, it's Victoria Lockard from
2 Greenberg Traurig.

3 Yes, you are understanding that perfectly. And we have
4 discussed with Mr. Nigh and others, and I think we've reached
5 an agreement. You know, these are sort of the collateral
6 case-specific fact witnesses as the bellwether cases get set
7 for trial, and no one believes that this is really of any great
8 urgency. So that would include friends, family, employers.
9 You know, certainly, Judge Kugler had indicated that we're to
10 start with two treaters for each bellwether, but defendants are
11 entitled to request additional treaters for good cause. And so
12 there may be some of those as we get further into bellwether
13 discovery. I don't think we're in disagreement on any of that
14 but we did not want to let the deadline pass without getting
15 some endorsement by the Court.

16 JUDGE VANASKIE: Sure. And anybody from the plaintiff
17 want to be heard on this?

18 MR. WILLIAMSON: Your Honor, this is George
19 Williamson. And Ms. Lockard is correct. We are in agreement
20 that these are sort of the peripheral depositions that don't
21 need to occur now. I think everyone's focus is on completing
22 the physician depositions. And -- and, you know, subsequent to
23 a trial scheduling order, you know, I think at that point the
24 parties can discuss third-party nonphysician depositions.

25 JUDGE VANASKIE: All right. What I'd ask is you

1 submit to me an agreed-upon order that accomplishes this so you
2 have the protection of an order on this particular point.

3 Yes, the depositions do not need to be completed by
4 October 4th.

5 MR. WILLIAMSON: Thank you, Your Honor.

6 MS. LOCKARD: Okay. And I'll just, just for
7 clarification, we can meet and confer on this if necessary and
8 hopefully come to some resolution but, you know, there is the
9 issue of additional physicians if there is a reason or a cause
10 for taking those, and so we don't want to be precluded from
11 asking for, you know, those good-cause physicians, you know,
12 after October 4th. The Court -- Judge Kugler has ruled that we
13 may -- we may pursue those and I just want to make sure that
14 we're clear that those are also included in these "peripheral
15 depositions" that we, you know, would discuss at a later time.

16 MR. WILLIAMSON: And, Your Honor, I think that --
17 again, this is George Williamson.

18 JUDGE VANASKIE: Mr. Williamson.

19 MR. WILLIAMSON: I think that would be an issue on a
20 case-by-case basis to the extent that the defendants find that
21 there is some other doctor that they feel is necessary to
22 depose. I think the expectation is at some point we're going
23 to cut down the pool of 28 to a smaller number, at which time,
24 you know, there potentially would be other depositions,
25 including these third-party depositions. So I don't think

1 we're in agreement that we're just going to open the
2 depositions up for all 28 of the bellwether cases past October
3 4th. Again, you know, we expected at some point there would be
4 a winnowing of this pool and, you know, if the defendants want
5 to make an application for an additional deposition after
6 October 4th, you know, I think that's something that, you know,
7 clearly they -- they can do but they have to raise that with
8 the Court and, you know, potentially Judge Kugler would need to
9 weigh on that issue.

10 JUDGE VANASKIE: But I do think it would be
11 appropriate to have in this order a paragraph that says that
12 the defense is not precluded from seeking leave to depose an
13 additional physician or physicians, because that's I believe
14 what we're talking about upon a showing of good cause.

15 Am I understanding that correctly?

16 MS. LOCKARD: That is our understanding as well of
17 what we're proposing, Judge.

18 JUDGE VANASKIE: All right. Yes, I think it would be
19 appropriate to, just so we don't get back into an argument that
20 the Special Master said no more physician depositions after
21 October 4th --

22 MR. WILLIAMSON: Okay.

23 JUDGE VANASKIE: -- you would have to do it on a
24 good-cause showing. So it's not a free-for-all either. All
25 right?

1 MR. WILLIAMSON: Okay. Thank you, Your Honor.

2 JUDGE VANASKIE: All right. Thank you.

3 Is there anything else we need to address at this time?

4 MR. SLATER: Nothing I am aware of for the plaintiffs,
5 Your Honor. This is Adam Slater.

6 MR. GOLDBERG: Nothing for defendants, Your Honor.

7 JUDGE VANASKIE: All right. Shall we get Judge Kugler
8 on the phone then?

9 MR. GOLDBERG: Sounds good, Your Honor.

10 JUDGE VANASKIE: All right. I'll drop off the call
11 and call Judge Kugler and we'll be rejoining you. Thank you.

12 (Brief recess taken at 11:07 a.m.)

13 JUDGE KUGLER: Good morning. It's Judge Kugler.

14 (All respond good morning, Your Honor).

15 JUDGE KUGLER: Do we have a court reporter on?

16 THE COURT STENOGRAPHER: Yes, Your Honor, it's
17 Camille.

18 JUDGE KUGLER: All right. Thanks for your letters,
19 your agendas. It looks like there is very little for me to do
20 today but we'll get right to the show-cause orders.

21 The Henton and Righteous matters, defense counsel wants
22 to withdraw them. It worked out Henton and seem to be close to
23 working out Righteous. Is that correct?

24 Who's going to speak for the defendants?

25 MR. HARKINS: Good morning, Your Honor. This is Steve

1 Harkins with Greenberg Traurig for the Teva defendants and the
2 joint defense group.

3 That is correct, we have worked out both of these cases;
4 though we reserve the right to request a new order to show
5 cause in the Righteous, Worikeena matter if those issues are
6 not actually resolved.

7 JUDGE KUGLER: Okay. There are ten that you wish to
8 put on for show cause for the next time. Any amendments to
9 that or do we still want to list ten for show cause?

10 MR. HARKINS: Your Honor, we do have updates on three
11 of those cases.

12 Case Number 4, Billy Hupp, Case Number 7, Velma Hurst
13 and Case Number 8, Debra Wright can be withdrawn. We are no
14 longer requesting orders to show cause with respect to those
15 three.

16 JUDGE KUGLER: Okay. That leaves Sandra Russell,
17 Flora Pina, P-I-N-A, Thomas Lloyd, Hector Rivera, Burlia,
18 B-U-R-L-I-A, Abdullahi, A-B-D-U-L-L-A-H-I, Benita, B-E-N-I-T-A,
19 Smiley and Jimmie Thorn. Any plaintiffs' counsel want to be
20 heard on these?

21 MR. CURTIS: Good morning, Judge --

22 UNIDENTIFIED SPEAKER: Your Honor --

23 MR. CURTIS: -- this is Bill Curtis on behalf of Ms.
24 Russell, the very first one on your list.

25 JUDGE KUGLER: Yes.

1 MR. CURTIS: My apologies, Your Honor. We had updated
2 and supplemented our fact sheet last week, and I thought as
3 part of that process that my office had reached out to confer
4 with defense counsel on trying to cure all of these
5 deficiencies. And I found out late last night that we did not
6 reach out to them, so that's our error.

7 If you'd like, Your Honor, I can go through the
8 deficiencies one at a time or, if you prefer, we can perhaps
9 defer this to the next one and later this afternoon I will
10 reach out to defense counsel myself to get this sorted out.

11 JUDGE KUGLER: Well, why don't you talk to defense
12 counsel, get it sorted out. In the meantime, we'll just throw
13 it on the order to show cause list. If it is worked out, then
14 obviously it's not going to be dismissed. Okay?

15 MR. CURTIS: Very good. Thank you, Judge.

16 JUDGE KUGLER: Thank you.

17 Anybody else?

18 MS. GOLDENBERG: Your Honor, this is Marlene
19 Goldenberg on behalf of the PEC. I did want to just direct you
20 to Number 2 on the sheet here; and notably the only two
21 deficiencies the defendants have flagged are that the pharmacy
22 records don't contain NDC codes. This is information that's
23 already in the hands of the defendants. I certainly don't
24 believe that it's grounds for issuing an order to show cause
25 when the defendants have the information they're asking for.

1 JUDGE KUGLER: Mr. Harkins, what do you say?

2 MR. HARKINS: Your Honor, the NDC code information, if
3 that is all that we are actually missing, and I apologize, I
4 don't know if defense counsel who specifically reviewed this
5 fact sheet is available to discuss, I mean, my understanding is
6 that the pharmacy records are missing what we would consider to
7 be core product ID information. So we would still request that
8 this case be listed though again. If there is information that
9 we do have, we would, of course, agree to withdraw the order to
10 show cause prior to dismissal next month.

11 JUDGE KUGLER: Well, the papers that you gave me,
12 that's all it said. Ms. Goldenberg's correct. It just says
13 that the produced pharmacy records do not contain any NDC codes
14 and that's the only things that you note in this.

15 So why don't we do this: Why don't we just hold off on
16 issuing an order to show cause. We won't issue the OSC on this
17 one now, but we can always do it next time if this is an issue.
18 So we will take that off the list.

19 MR. HARKINS: Thank you, Your Honor.

20 JUDGE KUGLER: How about anybody else?

21 MS. TOLLIVER: Yes, Your Honor. This is Tiffany
22 Tolliver on behalf of plaintiffs Benita Smiley and Jimmie
23 Thorn.

24 JUDGE KUGLER: Tiffany Tolliver. Okay. You want to
25 talk about Benita Smiley?

1 MS. TOLIVER: Yes, Your Honor, and Jimmie Thorn.
2 We've cured -- we filed the Plaintiff Fact Sheets. I've
3 communicated with defense counsel regarding -- not the
4 Plaintiff Fact Sheets, we've done the Short-Form Complaint.
5 We're working with our clients to get the Plaintiff Fact Sheets
6 completed. But I've spoken with defense counsel and asked for
7 an extension on that to get that taken care of.

8 MR. HARKINS: Your Honor, on behalf of defense
9 counsel, as we've consistently done, we'll certainly remove any
10 of these cases from these order to show cause lists as soon as
11 a PFS is filed; but as this PFS was due in February and it has
12 still not been filed in either of these cases, we do so request
13 an order to show cause at this time.

14 JUDGE KUGLER: All right. We will issue the order to
15 show cause on Benita Smile and Jimmie Thorn. We can always
16 remove them.

17 MS. TOLIVER: Your Honor, I will just note, we just
18 learned about this issue. When we got the transfer order, that
19 wasn't included in it. So we just learned that we need to file
20 the Plaintiff Fact Sheets and the plaintiffs -- and the
21 Short-Form Complaint which we have been working on.

22 JUDGE KUGLER: Well, the order would not be in the
23 transfer order from the MDL panel. It would be an order that's
24 already entered in this case, which are all available online,
25 and it's self-executing. You don't need a request from the

1 defendants to submit a PFS; you just need to do it
2 automatically. There's a timeframe that's set forth in that
3 order.

4 MS. TOLLIVER: Yes, Your Honor.

5 THE COURT: Okay. Well, we'll deal with that then
6 next time if we have to.

7 Anybody else on these?

8 (No response).

9 JUDGE KUGLER: Okay. Defense counsel also has ten
10 more cases it wants to list.

11 Again, any updates on this list of ten, Mr. Harkins?

12 MR. HARKINS: Your Honor, for the defense, Case Number
13 4, Harold Sanders, has been cured and we will remove that from
14 the agenda going forward.

15 JUDGE KUGLER: Okay. Number 4.

16 Any plaintiffs' counsel want to be heard on Ernest
17 Sumpter, Tamara Ledkins, Donald Bailey, Rex --

18 MS. TEJADA: Your Honor, I'm sorry, this is Rachell
19 Tejada on Donald Bailey for the plaintiff.

20 JUDGE KUGLER: Yes.

21 MS. TEJADA: We submitted everything in the
22 deficiency. The only pending issue is the pharmacy records
23 which we've already requested and we followed up. So I don't
24 know if you want to take that one off or wait until next month.
25 Regardless, it's not in our hands anymore. We requested the

1 records.

2 JUDGE KUGLER: Well, this is just going to be listed
3 again. It's not even going to hit the show-cause list yet. So
4 let's just list this again next month and we will go from
5 there. Okay?

6 MS. TEJADA: Okay. Thank you.

7 JUDGE KUGLER: Rex Phillips, Valentin,
8 V-A-L-E-N-T-I-N, Landau, L-A-N-D-A-U, Linda Kountz,
9 K-O-U-N-T-Z, Gloria Knight, K-N-I-G-H-T, James Rigdon,
10 R-I-G-D-O-N, Helen Wright --

11 MS. TEJADA: Your Honor, this is Rachell Tejada --
12 sorry. This is Rachell Tejada again for the plaintiff in James
13 Rigdon, Number 9.

14 JUDGE KUGLER: Yes.

15 MS. TEJADA: All of these deficiencies have been cured
16 and sent over to the defense. I don't know if you've had an
17 opportunity to see the amended PFS in my email, but these have
18 all been cured.

19 JUDGE KUGLER: Mr. Harkins, do you have any
20 information on this?

21 MR. HARKINS: Your Honor, I did not receive any
22 confirmation on new information related to the Rigdon case
23 since we sent this list of deficiencies to the plaintiff,
24 plaintiffs' leadership last week, nor was this case addressed
25 during the meet and confer that took place last week.

1 So, unfortunately, I cannot confirm that any of these
2 have been. Of course, if they are, we will agree to remove it
3 going forward as it is not yet ready for an order to show
4 cause.

5 JUDGE KUGLER: All right. Well, we will just continue
6 to list it then and you can take care of that. Maybe a
7 one-on-one conversation with plaintiff's counsel might be
8 helpful.

9 MS. TEJADA: Yes, you can have them reach out. I have
10 called and emailed but they haven't replied. If you could have
11 them reach out to me, defense counsel.

12 JUDGE KUGLER: Well, maybe you ought to speak on the
13 phone or something, get this straightened out.

14 All right. Helen Rice, anybody on that?

15 (No response).

16 JUDGE KUGLER: All right. Then those cases we'll
17 shift again for another listing.

18 And then we have two more for the first time, Joseph
19 Franch, F-R-A-N-C-H, and Joseph Lovell, L-O-V-E-L-L, Mr.
20 Harkins, any updates on those two?

21 MR. HARKINS: No updates from the defense, Your Honor.

22 JUDGE KUGLER: Anything from any plaintiffs on those?

23 MS. PENDLEY: This is Madeline Pendley from Levin
24 Papantonio Rafferty.

25 Just an update. One client has died; the other is just

1 unresponsive. We're continuing to work on it and we'll let you
2 know if anything changes.

3 JUDGE KUGLER: Okay. These things happen. We will
4 just continue. We will just list this and see what happens.

5 All right. That's the list that I'm aware of from the
6 orders to show cause and things of that nature.

7 Is there anything else you need me to discuss at this
8 point?

9 MR. SLATER: This is Adam Slater, Your Honor. I am
10 not aware of anything from plaintiffs.

11 MR. GOLDBERG: Nothing from defendants, Your Honor.
12 This is Seth Goldberg, by the way.

13 JUDGE VANASKIE: Good to hear you guys. Thank you.
14 So I'll just -- Mr. Slater you are very happy these days
15 with your Yankees I assume?

16 MR. SLATER: I am in somewhat of disbelief but I'd
17 rather be in this type of disbelief than the type I was
18 experiencing earlier in the season.

19 JUDGE KUGLER: Well, you never know. It's a long
20 season, as they say.

21 MR. SLATER: It is. It is.

22 JUDGE KUGLER: All right. Well, look, enjoy the rest
23 of your summer. Nice talking to you, as always. But you know
24 there's always next year, right?

25 MR. SLATER: And there's always football season.

1 JUDGE KUGLER: Well, I'm not optimistic there, either.

2 You don't know, you never know.

3 All right. Have a nice rest of your summer.

4 MR. SLATER: I hate to say it, I'm on Judge
5 Schneider's side on that one.

6 JUDGE KUGLER: I know. I know, I know. We'll talk to
7 you in September then everybody. Thank you very much.

8 MR. SLATER: Thank you, Your Honor.

9 MR. GOLDBERG: Thank you, Your Honor.

10 JUDGE VANASKIE: Bye-bye.

11 (The proceedings concluded at 11:25 a.m.)

12 -

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14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.

16

17 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
18 Court Reporter/Transcriber

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August 25, 2021
Date

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